80-1928
No. A-846

FILED
MAY 29 1981
ALEXANDER L. STEVAS
CLERK

IN THE
Supreme Court of the United States
OCTOBER TERM, 1980

GUILD TRUST,
MELBA L. GUILD,
DELMAR D. DEAN and MARY MELBA GUILD DEAN,
EARL GUILD and BARBARA JO GUILD,
FERD CHRISTIANSEN and EVA LOIS CHRISTIANSEN,
Petitioners,

v.

AMOCO PRODUCTION COMPANY,
CHAMPLIN PETROLEUM COMPANY,
UNION PACIFIC LAND RESOURCES CORPORATION,
Respondents.

BRIEF IN OPPOSITION TO PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE TENTH CIRCUIT

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QUESTION PRESENTED

Whether as a matter of Wyoming law a reservation of "all coal and other minerals" together with the exclusive right "to mine for and remove . . . all such coal and other minerals," made in a deed conveying real property, includes oil and gas.

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This Brief is submitted by respondents Amoco Production Company ("Amoco'), Champlin Petroleum Company, and Union Pacific Land Resources Corporation, who were the appellees in the court below, in opposition to the Petition for Certiorari in this case.

COUNTERSTATEMENT OF THE CASE

This is a diversity suit to resolve a dispute over title to minerals in approximately 455 acres of Wyoming land. At issue is the effect under Wyoming law of the

mineral reservation in a 1909 deed from Union Pacific Railroad Company ("the Railroad"), conveying the surface estate in the land to predecessors of the petitioners, Guild Trust *et al.* The deed reserved to the Railroad and its successors "all coal and other minerals," together with exclusive rights "to mine for and remove any and all such coal and other minerals . . . ."[1] Petitioners claim that this reservation does not include oil and gas.

The litigation arose in October 1977, when petitioners refused to allow respondent Amoco to drill on the land for oil and gas. Amoco leases the oil and gas rights from respondent Champlin Petroleum Company, which together with respondent Union Pacific Land Resources Corporation has succeeded to the Railroad's reserved mineral rights.

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[1] The reservation in the deed reads as follows:

> Excepting and reserving to said Union Pacific Railroad Company, its successors and assigns,
>
> First: A strip of land two (200) hundred feet wide on each side of the center line of the railroad of said Union Pacific Railroad Company as said road is now constructed over and across said land.
>
> Second: All coal and other minerals within or underlying said lands.
>
> Third: The exclusive right to prospect in and upon said land for coal and other minerals therein, or which may be supposed to be therein, and to mine for and remove, from said land, all coal and other minerals which may be found thereon by any one.
>
> Fourth: The right of ingress, egress and regress upon said land to prospect for, mine and remove any and all such coal or other minerals, and the right to use so much of said land as may be convenient or necessary for the right of way to and from such prospect places or mines and for the convenient and proper operation of such prospect places, mines and for roads and approaches thereto or for removal therefrom of coal, mineral, machinery or other material.

At trial, neither party offered any direct evidence of the subjective intent of the parties in 1909 when the deed was executed, other than the language of the mineral reservation itself. Respondents contended that the reservation includes oil and gas as a matter of law. In addition, they submitted evidence showing that in Wyoming the language of the reservation would have been understood to include oil and gas at the time it was made. Petitioners relied upon scattered documents unrelated to the transaction or the instruments or the land at issue, from which they sought to infer that, in reserving "all coal and other minerals" and exclusive mining rights in the 1909 deed, the Railroad would have intended to reserve only "coal" and not "other minerals."[2]

The trial court held as a matter of law that in Wyoming, as under the majority rule prevailing outside Pennsylvania and Arkansas, the reservation of "all coal and other minerals" severed the entire mineral estate from the surface, and unambiguously reserved all minerals including oil and gas. (App., Ex. B),[3] The court relied, *inter alia,* on a number of Wyoming au-

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[2] Although petitioners did not request production of documents until 40 days after the trial court's deadline for completion of discovery, the court postponed a scheduled trial date and permitted petitioners to discover all documents relating to the sale and conveyance of the land at issue and the reservation of minerals therein. Upon production of these documents, the court reset the case for trial 2½ months later, on a date agreed to by petitioners's counsel. On the eve of trial, petitioners nonetheless demanded massive additional discovery regarding all land sales made by the Railroad or its predecessors over a period of more than a century. This second untimely discovery request was denied.

[3] Citations to "App." are to the Appendix to the Petition.

thorities indicating that Wyoming would follow the majority rule, on the settled legal meaning of federal reservations of "all coal and other minerals" as determined in *Skeen* v. *Lynch*,[4] and on the considerations favoring such a settled legal rule for interpreting reservations of minerals under Wyoming law advanced by a prominent authority on oil and gas law.[5] Since the effect of the reservation was a question of law, the court concluded that the extrinsic evidence introduced by both parties was irrelevant and could not be permitted to vary the settled legal meaning of the language used. The court also found that, were extrinsic evidence of intent to be considered, the evidence of the prevailing Wyoming usage at the time of the reservation also indicated that the reservation includes oil and gas. (App. 28-29.) The court later reconsidered and reaffirmed its holding in an Order of January 5, 1978, in which it rejected petitioners' belated contention that the inclusion of rights "to mine" makes the reservation of "all coal and other minerals" ambiguous.[6]

In the judgment petitioners seek to review (App., Ex. A), the Tenth Circuit Court of Appeals unanimously affirmed the district court's holding and adopted its reasoning. In addition, the court of appeals found corroboration of the trial court's reading of the law of Wyoming in the Wyoming Supreme Court's subsequent decision in *Coronado Oil Co.* v. *Grieves*, 603

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[4] 48 F.2d 1044 (10th Cir.), *cert. denied*, 284 U.S. 633 (1931).

[5] App. 33-35, *citing* Kuntz, *The Law Relating to Oil and Gas in Wyoming*, 3 Wyo. L.J. 107 (1949).

[6] Order Denying Defendants' Motion for New Trial, January 5, 1978, attached as the Appendix to this Brief.

P.2d 406 (Wyo. 1979).[7] The opinion of the Wyoming Supreme Court in that case cited approvingly the district court's decision in the present case, relied upon the Wyoming authorities cited therein, and concluded that in Wyoming at the turn of the century "oil was considered generally to be a mineral and an oil well to be a mine." *Id.* at 411.

ARGUMENT

The Petition presents no considerations that warrant review by this Court on *certiorari*. The title question decided by the courts below is governed entirely by Wyoming real property law and the state-law rules for interpreting instruments of title. Although the 455 acres of land at issue were originally granted to the Railroad's predecessor by an 1862 Act of Congress,[8] the Petition raises no question under that Act or under any other federal law. Nor is there any contention that the result reached below conflicts with decisions of this Court or of any of the Circuits. Since the case was decided as a matter of law, and with the benefit of exhaustive briefing by petitioners in both courts on the relevant legal questions, none of the discretionary pretrial procedural rulings of which petitioners broadly complain could have affected the result.

Moreover, while the legal effect of the reservation of "all coal and other minerals" was a question of first impression under Wyoming law, the decisions below

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[7] The holding in *Coronado Oil* was that provisions of the Wyoming Constitution of 1890 and a 1907 Wyoming statute authorizing condemnation of rights of way for "mining" purposes permitted condemnation for purposes of extracting oil and gas.

[8] Pacific Railroad Act of 1862, 12 Stat. 489, *as amended by* 13 Stat. 356 (1864).

are entirely consistent with the jurisprudence of that state. They are supported by pertinent Wyoming authorities cited by both courts; there is no Wyoming authority to the contrary; and the district court's opinion has now been endorsed by the Wyoming Supreme Court itself in the *Coronado Oil* case, *supra.* As noted by both courts below, the result also conforms to the majority rule followed in other jurisdictions.

Indeed, petitioners acknowledge that a reservation of "all coal and other minerals," standing alone, unambiguously reserves oil and gas as a matter of law. (Petition, pp. 43-44.) Their whole argument is that this unambiguous reservation is rendered ambiguous by the use of "mining" terminology elsewhere in the reservation. (*Id.* pp. 45-58.) That contention has been squarely rejected as applied to indistinguishably-worded reservations under the law of other jurisdictions. *Rowe* v. *Chesapeake Mineral Co.,* 156 F.2d 752 (6th Cir.), *cert. denied,* 329 U.S. 776 (1946); *Shell Oil Co.* v. *Dye,* 135 F.2d 365 (7th Cir. 1943); *Sellars* v. *Ohio Valley Trust Co.,* 248 S.W.2d 897 (Ky. 1952); *Warren* v. *Clinchfield Coal Corp.,* 166 Va. 524, 186 S.E. 20 (1936); *see* also *Skeen* v. *Lynch, supra.* And it is effectively refuted by the Wyoming *Coronado Oil* decision, holding that "mining" includes drilling under Wyoming laws enacted contemporaneously with the reservation at issue and recognizing that in Wyoming an oil and gas well has long been regarded as a "mine." 603 P.2d at 411.

The ancillary questions tendered by the Petition are no more appropriate for review by this Court than is the application of Wyoming law to the 1909 mineral reservation:

(a) The Petition raises a question as to the effect on the Railroad's title in 1909 of an 1867 mortgage

executed by the Railroad's predecessor. (Petition, pp. 59-61.) Petitioners' argument on this question, which was made at best obscurely in the court below,[9] appears to be that legal title to the land was in the mortgage trustees as long as the mortgage was in effect, and that the Railroad, lacking title, could not reserve the minerals. Apart from other difficulties,[10] that argument is self-defeating for petitioners: If the Railroad lacked title to the land at the time of the conveyance as petitioners contend, it could not have conveyed valid title to petitioners' predecessors, and the petitioners would have no claim under the deed even to the surface, much less to the minerals that were expressly excluded from the deed. In any event, assuming the argument had any possible merit, it concerns nothing

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[9] *See* Brief of the Appellants to the Court of Appeals, p. 44.

[10] As respondents showed in their brief to the court of appeals, petitioners' mortgage argument is untenable on multiple grounds. (Brief of the Appellees, pp. 44-45.) First, the mortgage is irrelevant to the Railroad's title at the time of the 1909 deed, because it was formally released in 1904, five years before the date of the deed. (Petition, p. 26.) Second, the land was in fact freed of the mortgage lien in 1899, when it was conveyed to the Railroad by its predecessor free and clear of all prior liens and encumbrances, pursuant to a foreclosure of another mortgage. *See* Special Master's Deed, April 20, 1899 (Plaintiffs' Ex. 2); Union Trust Co. v. Union Pacific Ry., Final Decree ¶ 23 (D. Wyo., Dec. 1, 1898). Third, even while the mortgage was in effect, the mortgagor had an equity of redemption to support a reservation of minerals, and nothing in the mortgage was inconsistent with such a reservation. Fourth, petitioners' attack on the validity of a portion of the instrument on which their own claim of title is based is barred under the doctrine of estoppel by deed. *E.g.*, Russell v. Texas Co., 238 F.2d 636 (9th Cir. 1956) *cert. denied*, 354 U.S. 938 (1957); Mortenson v. Northern Pac. Ry., 295 F. Supp. 158 (D. Mont. 1969), *aff'd sub nom.* Mortenson v. Burlington Northern, Inc., 434 F.2d 1314 (9th Cir. 1970); 31 C.J.S. *Estoppel* § 38f.

more than the interpretation of a mortgage under applicable state law, and provides no basis for review by *certiorari*.

(b) The Petition also challenges the court of appeals' denial of petitioners' last-minute motion to postpone the scheduled oral argument in this case so as to permit consolidation with a later case brought by petitioners in early 1978 (*"Guild II"*). Petitioners' motion to consolidate was not filed until 12 days before the scheduled oral argument, even though both cases had been pending separately before the court of appeals for more than a year. The motion was an abrupt about-face for petitioners, who had previously argued that all proceedings in *Guild II* should be stayed until after a final decision on appeal in this case.[11] In these circumstances, the court's exercise of its discretion to deny petitioners' untimely motion presents no question for review by this Court.[12]

(c) Finally, the Petition contends that the courts below erred by deciding this case at all, rather than abstaining and remitting respondents to the Wyoming state courts. Although petitioners raised this issue in

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[11] Appellants' Objection to Calendar Assignment, Motion for Stay, and Motion for Abstention (in the court of appeals), August 31, 1979, p. 3; Motion to Vacate Summary Judgment Hearing and to Stay Further Proceedings (in the district court), February 28, 1979; Motion to Vacate Order Overruling Motion to Vacate Summary Judgment Hearing, and for Order to Stay Further Proceedings (in the district court), March 14, 1979.

[12] Petitioners' contention that they may be barred by collateral estoppel from litigating in *Guild II* unspecified questions that they did not raise in this case is premature. It goes to the appropriate scope for any application of collateral estoppel in *Guild II*, which is still pending in the court of appeals, not to the appropriateness of deciding the present case separately on its own merits.

both courts below, the Petition cites no authority and advances no consideration suggesting that there is any substantial abstention question for this Court to review. In fact, under the controlling decisions of this Court, federal courts have equitable discretion to abstain from deciding unsettled questions of state law only under three "extraordinary and narrow" circumstances. *Colorado River Water Conservation District* v. *United States*, 424 U.S. 800, 813-16 (1976), quoting *County of Allegheny* v. *Frank Mashuda Co.*, 360 U.S. 185, 188-89 (1959). Otherwise, a federal court has a "duty . . . to adjudicate a controversy properly before it," *id.* at 813, and "the difficulties of ascertaining what the state courts may hereafter determine the state law to be do not in themselves afford a sufficient ground for a federal court to decline to exercise its jurisdiction . . . ." *Meredith* v. *Winter Haven*, 320 U.S. 228, 235 (1943); *accord*, *McNeese* v. *Board of Education*, 373 U.S. 668, 673 (1963). Here, there is no constitutional question, no difficult question implicating state legislative or governmental policy and no criminal or tax proceedings to be disrupted.[13] This title case presents only a routine question of state common law of a kind routinely decided by federal courts in diversity cases.[14] As this Court's decisions make clear, abstention from deciding such questions is not even permissible, much less required. The fact that the courts below performed their "duty . . . to adjudicate" this case is not a ground for review on *certiorari*.

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[13] Colorado River Water Conservation District v. United States, *supra*, 424 U.S. at 814-16.

[14] *E.g.*, Rowe v. Chesapeake Mineral Co., *supra*; Shell Oil Co. v. Dye, *supra*; Lutes v. United States District Court, 306 F.2d 948 (10th Cir.), *cert. denied*, 371 U.S. 941 (1962).

CONCLUSION

For the foregoing reasons, the Petition should be denied.

Respectfully submitted,

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APPENDIX

APPENDIX TO THE BRIEF IN OPPOSITION

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF WYOMING

No. C77-215K

AMOCO PRODUCTION COMPANY, a corporation; CHAMPLIN PETROLEUM COMPANY, a corporation; UNION PACIFIC LAND RESOURCES CORPORATION, a corporation, *Plaintiffs*,

vs.

GUILD TRUST; MELBA L. GUILD; DELMAR D. DEAN and MARY MELBA GUILD DEAN, husband and wife; EARL GUILD and BARBARA JO GUILD, husband and wife; FERD CHRISTIANSEN and EVA LOIS CHRISTIANSEN, husband and wife, *Defendants*.

ORDER DENYING DEFENDANTS' MOTION FOR NEW TRIAL

Filed January 5, 1979

The above-entitled matter coming on regularly for hearing before the Court on defendants' Motion for New Trial dated December 11, 1978 and plaintiffs' Response thereto of December 28, 1978; and the Court having considered, in addition to said Motion and Response, the entire brief filed by the defendants after trial, including specifically the late filed supplemental portion thereof filed on December 1, 1978 after the Court's final deadline for the submission of briefs and after the Court's Opinion and Judgment of November 29, 1978 had been entered, as well as the Memorandum Brief of plaintiffs timely filed September 5, 1978, and the Court having reviewed each of its rulings that are complained of in the defendants' Motion for New Trial and having found no error therein, and the Court further finding that no good ground exists for a

new trial in this case, and being fully advised in the premises; the Court finds as follows:

1. That the authorities cited in defendants' brief do not support their contention that there is a generally recognized rule of law or a rule of Wyoming law under which the mineral reservation in this case must be deemed ambiguous;

2. That, as indicated in authorities cited at page 6-7 of the Court's Memorandum Opinion of November 29, 1978, at least in Wyoming the term "mines" has long included oil and gas extraction sites and the term "to mine" has long included the process of extracting oil and gas from the earth, and therefore the inclusion of these terms in the reservation in this case does not introduce any ambiguity into the reservation under Wyoming law;

3. That the Court's holding that the reservation at issue is unambiguous and severs the mineral estate from the surface, including the oil, gas and associated liquid and gaseous hydrocarbons, and reserved the mineral estate to the grantor, was based on the totality of the authorities and considerations discussed in its Memorandum Opinion, and not solely on Burke v. Southern Pacific Railroad Co., 234 U.S. 669 (1914), and Skeen v. Lynch, 48 F.2d 1044 (10th Cir. 1931), which cases the Court nonetheless considers to exemplify the settled unambiguous meaning of the language of the reservation;

Now, Therefore, It Is Ordered that defendants' Motion for New Trial be, and the same is, hereby denied.

Dated this 5th day of January, 1979.

Ewing T. Kerr
U. S. District Judge